BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PATRICIA MANLOVE	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,010,309
K-MART CORPORATION	)	
Respondent	)	
AND	)	
	)	
PACIFIC EMPLOYERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the June 10, 2003 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was provided benefits in the form of medical treatment after the Administrative Law Judge determined that claimant had suffered accidental injury arising out of and in the course of her employment.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant fell on September 23, 2002, while walking through respondent's jewelry department. Claimant was not employed in the jewelry department, but upon entering the store prior to clocking in she noticed a coworker with a puzzled expression on his face.

Upon inquiry, she was advised that he was looking for a particular cologne for his daughter-in-law. Claimant then proceeded to assist the coworker/employee in the search for the cologne. While walking around a corner of the jewelry department, claimant stepped on a small box, slipping and falling, striking her left side.

It is clear from the record that claimant did not work in the jewelry department and had not clocked in at the time. The accident occurred at approximately 9:40 a.m., with claimant's shift scheduled to start at 10:00 a.m. However, claimant testified that it is her obligation as a K-Mart employee to assist customers in any way possible. Claimant's testimony is unrebutted that her intent and purpose that day in the jewelry department was to assist a fellow employee/customer find a particular product for the purpose of having him buy that product.

In order to collect benefits under the Workers Compensation Act, a worker must suffer accidental injury arising out of and in the course of her employment.[1]

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[2]

> The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[3]
>
> The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service.[4]

K.S.A. 2002 Supp. 44-508(f) states:

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[1] K.S.A. 44-501.

[2] K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

[3] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[4] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984).

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when a worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

In this instance, it is uncontradicted that claimant was on the employer's premises at the time of the accident. However, respondent argues that claimant's activities while on the premises were of a personal nature or personal errand and, therefore, the premises exception to the "going and coming" rule would not apply.[5]

However, in this instance, while claimant may have, in part, been on a personal errand, she was also involved in the dual purpose errand of assisting a customer. The co-employee was her friend, but he was also a customer. Claimant's actions on that date were intended to benefit the respondent in attempting to assist a customer with a potential sale. Accidental injuries which occur on dual purpose excursions where the benefit is both to the employer and the employee are generally ruled compensable.[6]

In this instance, the Board finds that while claimant's accident did occur prior to her clocking in with respondent, she was nevertheless advancing the benefit of her employer while on her employer's premises. The Board, therefore, finds for preliminary hearing purposes that claimant's accidental injury did arise out of and in the course of her employment with respondent and the Order of the Administrative Law Judge granting benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 10, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

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[5] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

[6] 1 Larson's Workers' Compensation Law § 18.00.

Dated this ____ day of July 2003.

BOARD MEMBER

c: Bruce A. Brumley, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Director